

HAIBER V. MONTEHERMOSO,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

THIS MATTER comes before the court on limited remand from the Fourth Circuit Court of Appeals with instructions for this court to supplement its earlier Order dismissing without prejudice Petitioner’s petition filed pursuant to 28 U.S.C. § 2254. (No. 12-6194, 4th Cir. Feb. 3, 2012). The Fourth Circuit has instructed that on remand this Court shall supplement the record with an Order on appealability.

Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, this Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (when relief is denied on procedural grounds, petitioner must establish both that dispositive procedural ruling is debatable, and that petition states a debatable claim of the denial

of a constitutional right).

Finally, in accordance with the instructions of the Fourth Circuit in its remand Order, the Clerk of this Court shall return the record, as supplemented by this Order, to the Fourth Circuit Court of Appeals.

IT IS SO ORDERED.

Signed: February 8, 2012

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

